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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-653

THE STATE OF MICHIGAN,
Petitioner,
v.
RICHARD BERT MOSLEY,
Respondent.

BRIEF FOR THE STATE OF MICHIGAN

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TABLE OF CONTENTS

	Page
Index of Authorities	ii
Opinion below	1
Jurisdiction	2
Questions presented	2
Constitutional provision involved	3
Statement of Facts	3
Summary of argument	13

Argument:

I.

An Accused who has Once Invoked his Right to Remain Silent, May Subsequently Waive his *Miranda* Rights Prior to a Later Interrogation Which is Conducted for Good Faith Reasons in a Non-Coercive Manner and is not Initiated for the Purpose of Undermining the Right Previously Exercised 15

A. The Purpose Underlying the *Miranda* Rule was Fully Respected in the Instant Case... 16

B. The *Miranda* Rule was Erroneously Applied in the Instant Case in View of Specific Provisions in *Miranda* v *Arizona*..... 19

C. The Michigan Court of Appeals Misinterpreted and Misapplied the Rule Derived from *Westover* v *United States*, Companion Case to *Miranda* v *Arizona*..... 21

Page

D. The Opinion of the Michigan Court of Appeals is in Conflict with Decisions of Other Courts, Both State and Federal, Which have Considered the Question Now Before this Court 23

E. The Interpretation Given *Miranda* v *Arizona* and *Westover* v *United States* by the Michigan Court of Appeals Offends a Common Sense Approach to Effective and Efficient Law Enforcement 28

II.

The Invocation of the Right to Remain Silent Relative to One Crime Does Not Preclude Interrogation vis-a-vis a Separate Crime..... 31

Conclusion 36

INDEX OF AUTHORITIES

Cases

Adams v United States, 317 US 268; 63 S Ct 236; 87 L Ed 1461 (1938)..... 21

Commonwealth v Grandison, 449 Pa 231; 296 A2d 730 (1972) 24, 28, 33

Conway v State, 7 Md App 400; 256 A2d 178 (1969) 19, 24, 33

Coughlan v United States, 391 F2d 371 (9th Cir cert den, 393 US 870; 21 L Ed 2d 139..... 25

Page

Dyett v People, 177 Colo 370; 494 P2d 94 (en banc) (1972) 24

Gunter v State, 477 SW 2d 557 (Ct of Crim App 1972) 24

Hill v State, 429 SW 2d 481 (Tex Crim App 1968), cert den 393 US 955; 89 S Ct 384; 21 L Ed 2d 367 (1968) 24

Hill v Whealon, 490 F2d 629 (6th Cir, 1974)....24, 25, 33

Jennings v United States, 391 F2d 512 (5th Cir, 1968), cert den, 393 US 868; 89 S Ct 154; 21 L Ed 2d 136 (1968) 19, 25, 26, 29, 32

Johnson v Zerbst, 304 US 458; 58 S Ct 1019; 82 L Ed 1461 (1938)..... 21

McIntyre v State v New York, 329 F Supp 9 (ED NY 1971) 25

Michigan v Tucker, 417 US 433; 94 S Ct 2357; 41 L Ed 182, 193 (1974)..... 17, 19

Miranda v Arizona, 384 US 436, 473-74; 86 S Ct 1602, 1627-1628; 16 L Ed 2d 694, 723 (1966)....12-22, 25-32, 35, 36

Narro v United States, 370 F2d 329 (5th Cir), cert den 387 US 946; 87 S Ct 2081; 18 L Ed 2d 1334 (1966) 25

Penn v State, 456 P2d 606 (Okla Crim, 1969)..... 24

People v Duran, 269 Cal App 2d 112; 74 Cal Rptr 459 (Cal App 1969) 23

People v Gary, 31 NY 2d 68, 286 NE 2d 263 (1972) 24, 33

People v Lyons, 18 Cal App 3d 760; 96 Cal Rptr 76 (1971) 23

Page

People v Mosley, 51 Mich App 105; 214 NW 2d 564 (1974) 31

People v Pittman, 55 Ill 2d 39; 302 NE 2d 7 (1973).. 19, 24

People v White, 22 Ill 2d 180; 317 NE 2d 323 (1974) 24

Sergent v People, 177 Colo 354; 497 P2d 983 (en banc) (1972) 19, 24, 33

State v Bishop, 273 NC 283; 158 SE 2d 511 (1968).. 24

State v Emmett, 77 Wash 2d 520; 463 P2d 609 (1970) 24, 28

State v Estrada, 63 Wis 2d 476; 217 NW 2d 359 (1974) 24

State v Godfrey, 182 Neb 451; 155 NW 2d 438 (1968), cert den 392 US 937 .....18, 24, 29

State v Higginbotham, 261 La 983; 261 So 2d 638 (Louisiana 1972) 24

State v Law, 214 Kan 643; 522 P2d 320 (1974).... 24, 28

State v McClelland,——Iowa——; 164 NW 2d 189 (1969) 18, 24, 35

State v Moore, 189 Neb 354; 202 NW 2d 740 (1972) 24

State v O'Neill,——Minn——; 216 NW 2d 822 (1974) 24, 26

State v Robinson, (S. Dakota) 209 NW 2d 374 (1973) 24

Sullins v State, 448 SW 2d 96 (Ct of Crim App App Tenn 1969) 24

United States v Barnawell, 341 F Supp 619 (SD Cal 1972) 25

United States v Brady, 421 F2d 681 (2d Cir, 1970). 25, 28

Page

United States v Collins, 462 F2d 792 (en banc) (1972, 2d Cir), cert den 409 US 988; 93 S Ct 343, 34 L Ed 2d 254 (1972).....18, 21, 25, 28, 33

United States v Hatchel, 329 F Supp 113 (Mass 1971) 25

Westover v United States, 384 US at 494; 86 S Ct at 1638; 16 L Ed 2d at 735 (1966)..12-16, 18, 21, 22, 23, 27, 28, 29, 31-35

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BRIEF FOR THE STATE OF MICHIGAN

OPINION BELOW

The opinion of the Michigan Court of Appeals, Division I, (Petition for Writ of Certiorari, Appendix A, pp 11-13), is reported at 51 Mich App 105; 214 NW 2d 564 (1974).

JURISDICTION

The Judgment of the Michigan Court of Appeals was entered January 14, 1974 (Petition for Writ of Certiorari, Appendix A, p 11). Application for Rehearing was denied on March 11, 1974 (Petition for Writ of Certiorari, Appendix B, p 14). Application for Leave to Appeal to the Michigan Supreme Court was denied on June 27, 1974 (Petition for Writ of Certiorari, Appendix C, p 15). Application for Reconsideration was denied by the Michigan Supreme Court on August 28, 1974 (Petition for Writ of Certiorari, Appendix D, pp 16-17), the date Petitioner exhausted his state remedies. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

I.

Whether an accused who has once invoked his right to remain silent, may subsequently waive his Miranda rights prior to a later interrogation which is conducted for good faith reasons in a non-coercive manner and is not initiated for the purpose of undermining the right previously exercised.

II.

Whether the invocation of the right to remain silent relative to one crime precludes interrogation vis-a-vis a separate crime.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision which the present case involves is the Fifth Amendment to the United States Constitution which provides as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense or be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT

Respondent, Richard Bert Mosley, was convicted by jury verdict on April 5, 1972 in Detroit's Recorder's Court for the First Degree Murder of one Leroy Williams (A.3).[1] A confession made by Respondent was used against him at trial (R. 487-490).[2] The admissibility of said confession is the question presented to this Court in the instant case (Petition for Writ of Certiorari, p. 3).

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[1] References prefaced by A. refer to the pages in the joint appendix.

[2] References prefaced by R. refer to the record pages of the trial transcript.

Defendant Mosley was arrested at 1:05 P.M. on April 8, 1971 in connection with certain robberies that had occurred on Detroit's lower east side (A. 4-5, 17; R. 448).

Detective James Cowie of the Armed Robbery Section of the Detroit Police Department effected the arrest of Respondent for the armed robbery of the White Tower Restaurant and the Blue Goose Bar (A.12).[3] Cowie conveyed Respondent to the Robbery, Breaking and Entering Bureau located on the 4th floor of police headquarters (A. 6-7).

There, Cowie informed defendant Mosley of his *Miranda* rights. Respondent signed a Constitutional Rights Certificate of Notification acknowledging the giving of those rights and stated that he completely understood his rights (A. 7-8, 19-20; R. 455, 569-571). Cowie then asked Respondent about the White Tower robbery (A. 18-19).

Detective Cowie talked with defendant Mosley for only twenty minutes and the questioning ceased when Respondent declined to talk about the White Tower robbery (A. 13-14; R. 455, 558-559, 572).[4] At no time did Respondent request an atorney pursuant to the rights contained in the *Miranda* warnings (A. 9, 20). Cowie then took defendant Mosley from the 4th floor Armed Robbery Bureau to the 9th floor cell block area, the time of said transfer being

[3] Cowie stated that he received an anonymous telephone tip during the first week in April, 1971 in which he was told that Respondent and three other men—Anthony Smith, Ernest Thompson and Richard Christian—were involved in a series of robberies on the lower east side of Detroit (A. 4-5, 12).

[4] Detective Cowie testified that the twenty minutes he spent with Respondent included the time spent processing the necessary arrest papers (A. 14).

approximately 4:00 p.m.; and except for informing Respondent that Detective Gilbert Hill of the Homicide Bureau would speak with him, Cowie had no further contact with Respondent (A. 10-11, 15).

Thereafter, at about 6:20 p.m. Defendant Mosley was taken from the 9th floor cell block area to the 5th floor Homicide Bureau by Homicide Detective Gilbert Hill. Hill saw Respondent to interrogate him regarding the robbery-murder of Leroy Williams which had occurred some three months earlier (A. 21-22, 24; R. 459, 477-481). Prior to questioning, Hill again informed Defendant Mosley of his *Miranda* rights and the purpose of the interrogation. Respondent Mosley again indicated that he understood his rights and executed a signed *Miranda* rights form. At no time did he request counsel (A. 25-28, 42-43; R. 560-561).[5]

[5] On direct examination Detective Hill testified as follows concerning his contact with Respondent:

* * * * *

Q. (By Mr. Tatken): Okay. Now, you brought Richard Mosley down to the homicide bureau, correct?

A. Yes, sir.

Q. And about what time would that be?

A. 6:25, 6:30; something like that.

Q. And what did you do in relation to Richard Mosley at this time at the Homicide Bureau?

A. The first thing I did was I got two Miranda warning forms out.

* * * * *

(90) Q. (By Mr. Tatken): I will show you People's Proposed Exhibit No. 2, and what is that, please?

A. This is Detroit Police Department constitutional rights certificate of notification.

Q. Is that one of the two forms you got out—

A. Yes, sir.

Q. —on that day?

(Handing exhibit to Mr. Ziemba.)

Mr. Ziemba: Thank you, Mr. Tatken.

Q. (By Mr. Tatken): Now, after getting out those two forms, what did you do with the one that you have identified as People's Proposed Exhibit 2?

A. I told him to read it to himself.

(*continued on next page*)

Detective Hill then proceeded to question Respondent relative to the murder of Leroy Williams (A. 32).

(continued from preceding page)

Q. You told who to read what to himself?

A. Mr. Mosley. I asked him if he could read. And I told him I wanted him to read this to himself.

* * * * *

(91) Q. (By Mr. Tatken): You told him to read that form to himself?

A. Right. After I asked him if he could read.

Q. And did he reply that he could read?

A. Yes, sir.

Q. Did you ask him how far he had gone in school?

A. Yes, sir.

Q. What did he say to that?

A. He told me he went through the 10-A at Southeastern High.

Q. And did he appear to be reading that particular form?

A. Yes, sir.

Q. And that's the standard, is it not, Constitutional Rights Certificate of Notification form printed by the Detroit Police Department?

A. Yes, sir. Distributed by the Detroit Police Department, I know.

Q. Might be printed by some private printer, correct?

A. Right.

Q. All right. Now, he appeared to be reading this, correct?

A. Right.

Q. By that, his eyes scanned the particular paper?

A. Right.

Q. Did he repeat it out loud as some people do?

A. Not then. I told him to read it silently.

Q. And did he do so?

(92) A. Yes. When he said he was through, then I told him to read it out loud.

Q. And did he read it out loud?

A. Yes, sir.

* * * * *

A. I had him read it to himself. Then I had him read it out loud. Then I read it to him as I explained it to him.

Q. Did he read it back aloud the same way as you read it to him?

(93) A. No, he read it silently.

Q. Yes.

A. Then he read it out loud. I wanted him to do that so I could know that he could read.

(continued on next page)

Defendant Mosley denied, "almost immediately," any involvement in the murder (A. 32). Hill then informed Re-

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(continued from preceding page)

Q. Okay.

A. And then when he did that, then I went through and explained it to him.

Q. But not only did he read it silently, he read it out aloud, and then you read it out aloud to him, is that correct?

A. I assumed he read it silently. Then he read it out aloud. And then I went through and explained it to him.

Q. All right. And was he reading it back correctly? Were you comparing it with the form?

A. Yes, sir, he was.

* * * * *

Q. (By Mr. Tatken): Then you say you explained it to him?

A. Yes, sir.

Q. Did he ask for any explanation of any of 1 through 5?

(94) A. Nothing specific. I made it plain.

Q. May I see that form?

Did he indicate to you that he understood his rights?

A. Yes, sir, he did.

Q. And did he sign that form in front of you?

A. Yes, sir, he did.

Q. At what time?

A. At 6:35 p.m. on the 8th of April, 1971.

Q. Now, at any time did he ask for an attorney?

A. No, sir, he did not.

Q. At anytime during your questioning did he ask to make a telephone call?

A. He did not ask to make a phone call. I think he stated he had already made one. He said his father was there when he was arrested.

Q. Did he ask at any time during your questioning to see any of his relatives?

A. No, sir. He said that his father was present when he was arrested.

Q. Did he ask at any time that the questioning be terminated?

A. No, sir, he did not.

Q. Now, did you take a statement from him?

A. Yes, sir, I did.

Q. Prior to taking that statement from him, did you promise (95) him anything in return for that statement?

A. No, sir, I did not.

(continued on next page)

spondent that Anthony Smith had made a statement naming Defendant Mosley as the "shooter" in the slaying (A. 28-29, 31-32, 34) whereupon Respondent heaved a sigh and stated that he would tell Hill about the killing. He then made a statement, which he signed, admitting his role in the murder as well as the circumstances prior and subsequent to the shooting (A. 33-34; R. 487-490).

(*continued from preceding page*)

Q. Did you physically mistreat him in any way?
A. No, sir, I did not.
Q. Did you tell him at this time, prior to taking a statement from him, that Anthony Smith had already confessed to this particular crime and had implicated him?
A. I did.
Q. Did you tell him he had better confess because his accomplice had?
A. No, sir.
Q. Did you tell him that Anthony Smith, because of his confession, was going to get some sort of special treatment?
A. No, sir, I did not.

* * * * *

(96) Q. What time did you obtain a statement from the defendant Richard Mosley?
A. Some time after 6:35 p.m. on the 8th of April, 1971.
Q. How long approximately after 6:30?
A. This is one continuous action; this form was signed at 6:35, and we went right through it.

* * * * *

(100) Q. (By Mr. Tatken): Now, after he gave a statement to you, what did you do with Mr. Mosley?
A. I took him back upstairs.
Q. And did you have any conversation with him as you took him back upstairs?
A. Yes. He said—when we got around to the elevator he said a couple of things.
Q. What did he say to you at this time?
A. He said they were really sorry, and that he repeated that they were junkies, and said that he felt more better.
Q. More better about what?
A. Since he talked to me (A. 25-29).

Defendant Mosley testified that he was in fact apprised of his *Miranda* rights by Sergeant Cowie prior to being questioned about the robberies for which he was arrested. Respondent also stated that upon being asked about the robberies he elected to exercise his right to remain silent at which time the interrogation by Cowie was forthwith terminated (R. 558-559, 569-571).[6]

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[6] Respondent testified in the following manner at trial concerning his questioning by Cowie, indicating the circumstances and procedure surrounding his interrogation:

Q. After you were arrested were you taken some place by the police?
A. Yes, I was.
Q. And where were you taken, do you remember?
A. To the police bureau, 1300 Beaubien, police station.
Q. You mean by that police headquarters?
A. Yeah, police headquarters.
Q. Did you talk to anybody when you got to police headquarters?
A. I talked to Sergeant Cowie a half hour, I think, after.
Q. Did Sergeant Cowie tell you anything about your constitutional rights?
A. Yes, he did.
Q. Did he ask you to sign some sort of paper?
A. Yes, he did. He told me to read it—read the form and sign it.
Q. Did you read the form?
A. And—yes, I did; I read it.
Q. Was that a form setting forth your constitutional rights?
A. Yes, it was.
Q. Did you sign it?
A. Yes, I did.
Q. Did you understand what you were signing?
A. Not fully. I just know it couldn't harm me in no way. I just signed it, you know, I figured that was the regular form they had.
Q. Did Sergeant Cowie tell you at that time that you didn't have to answer his questions?
A. Yes, he did.
Q. Did he say that you had a constitutional right to remain silent?
A. Yes, he did.

(*continued on next page*)

Defendant Mosley also acknowledged that Detective Hill had informed him that Hill's interrogation concerned the Leroy Williams murder; Respondent also admitted that Hill had in fact apprised him of his *Miranda* rights prior to questioning (A. 42-43; R. 560-561).[7] Respondent also stated that the reason he confessed was due to the fact that

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(*continued from preceding page*)

Q. Did Sergeant Cowie ask you whether you wanted to answer some questions?

A. He asked me did I want to talk about some robberies.

Q. And what did you say to Sergeant Cowie?

A. I told him that I didn't want to talk about anything; that I wanted to exercise my rights, and that he had arrested me illegally and didn't have a warrant for my arrest, and I wanted to go home.

Q. After you told this to Sergeant Cowie, did he ask you any further questions about any robberies?

A. No, he didn't ask me nothing else (R. 558-559).

[7] The following colloquy between defense counsel and Respondent is illustrative of the point:

Q. (By defense counsel): Where did you first see Sergeant Hill on April 8th of 1971?

A. When he came to get me. He carried me downstairs.

Q. And where were you when he came to get you, sir?

A. I was locked up on the 9th floor.

(150) Q. Do you—I hand you, witness, People's Proposed Exhibit No. 2, and ask you, sir, whether you have ever seen that proposed exhibit before?

A. Yes, I did.

Q. And where did you see it for the first time?

A. On April the 8th, 1971.

Q. And was that at the time that Sergeant Hill spoke to you?

A. Yes. This is—yes, it was.

Q. Does your signature appear on that proposed exhibit?

A. Yes, sir.

Q. Did you sign it, sir, in Mr.—in Sergeant Hill's presence?

A. Yes, I did.

Q. Was that after you read this particular exhibit?

A. Yes, it was.

Q. And was it after Sergeant Hill explained the five points which appear on the exhibit?

A. Yes, sir (A. 42-43).

Detective Hill told him that co-felon Anthony Smith had put all the blame on him and not because he was coerced or because he did not understand his rights or because he had been denied an attorney (A. 42-44; R. 580).[8] In fact, Respondent specifically testified at trial that he was not physi-

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[8] Defendant Mosley's pretrial testimony illustrates the point:

Q. Did Sergeant Hill tell you, at the time we speak of, Mr. Mosley, anything about what Anthony Smith had told Sergeant Hill?

A. No. All I know is he just told me Anthony Smith had said I did—did—did—put everything on me, you know. That's all I can remember is that he told Anthony Smith that—he told me that Anthony Smith had put everything on me.

* * * * *

Q. How did you feel is the question, Mr. Mosley?

A. I was confused after he told me Anthony Smith had made a statement and put it all on me.

* * * * *

(153) Q. (By Mr. Ziemba): Were you afraid at all; were you frightened at all when Sergeant Hill was questioning you?

A. Yes, I was.

Q. Did you become frightened when Sergeant Hill had said Anthony Smith had put everything on you?

A. Yes, I was. And after he had told me that I were facing life, and that if I don't go ahead and tell what I know, that I would get life.

(154) Q. And that scared you,—

A. Yes.

Q. —is that right?

A. Yes, it did.

Q. And was that the reason that you made a statement to Sergeant Hill?

A. Yes, it was (A. 44).

cally abused or threatened into making a statement (R. 580).[9]

The trial judge ruled that Defendant Mosley's confession was voluntarily tendered and thus admissible in evidence (A. 45) and said confession was used against Respondent at trial (R. 482, 487-490).

Respondent's conviction was reversed by a three-judge panel of the Michigan Court of Appeals, Division 1, under date of January 14, 1974. The Michigan Appellate Court found that defendant Mosley was in fact twice apprised of his *Miranda* rights by Detectives Cowie and Hill. However, the Michigan court held that, based on the dictates of *Miranda* v *Arizona,* 384 US 436 at 473-474; 86 S Ct 1602 at 1627-1628; 16 L Ed 2d 694 at 723 (1966), all interrogation of Respondent should have ceased when he declined to answer Detective Cowie's questions. The Michigan Court of Appeals relied upon the following language in *Miranda* v *Arizona, supra,* in reaching its conclusion:

> "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown

[9] The Petitioner notes that Respondent Mosley's trial testimony differed in material respects from his testimony at the pretrial suppression hearing. At trial defendant Mosley asserted that he categorically denied any involvement in the murder and alleged that he chose to exercise his rights (R. 561) during the homicide inquiry. Respondent denied the truth of the contents of his confession (R. 564-565) and in fact denied ever making a statement to Hill (R. 577). Rather, Respondent alleged that the confession was entirely the work-product of Sergeant Hill (R. 585-586) and that he did not read its contents (R. 581) and he signed it only because he didn't want to go to jail for life for something he didn't do. By signing, he asserted at trial, he was assured that he would be charged only with manslaughter despite the fact that all the while he proclaimed his innocence to Hill (R. 561-564, 573-577).

> that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of incustody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked." (Petition for Writ of Certiorari, pp. 12-13).

SUMMARY OF ARGUMENT

The Michigan Court of Appeals, relying on *Miranda* v *Arizona,* and *Westover* v *United States,* ruled that a person being questioned about a crime cannot waive the right to remain silent once it has been invoked and cannot be interrogated at any time after exercise of that right.

Petitioner contends that such an interpretation of those cases is patently offensive to both the letter and spirit of those rulings. What the *Miranda* rule sought to establish were safeguards that would protect the constitutional rights of an accused during custodial interrogation. The *Miranda* rule was intended to ensure that an accused was fully and effectively advised of his rights to counterbalance the "inherently compelling pressures" of custodial interrogation. However, as long as the *Miranda* rights are given and the accused is given an opportunity to exercise them, those rights, as with any other constitutional privileges, may be waived if the waiver is a knowing and voluntary one.

Specific provision for the admissibility of the statement in this case is found in *Miranda v. Arizona* as well as *Westover* v *United States.* The court, in *Miranda,* said that an express statement that an accused was willing to make a

statement followed closely by a statement could constitute a waiver. That is precisely the case now before the Court. Detective Hill's testimony as well as that of the Respondent clearly shows that the statement made was the result of "one continuous action" that followed an express waiver of the right to remain silent.

Miranda also indicated that even if interrogation in a given case continued after a request for counsel, a subsequent waiver of that right could nevertheless be shown by the government. If the right to counsel could be waived after an initial request for an attorney, then this Court did not intend to establish a *per se* exclusionary rule once a right under *Miranda* was exercised.

The case now before this Court was also provided for by specific language in *Westover* which said that a "different case" would be presented if an accused were questioned by a second authority in different surroundings and was first adequately advised of his rights. The facts of the present case fall within the mentioned provision since Hill's questioning was removed both in time and place from Detective Cowie's and was conducted only after the *Miranda* rights were given and a waiver obtained.

In addition, none of the evils sought to be prevented by *Miranda* and *Westover* appear here. No overbearing conduct by the police, no long incommunicado questioning, and no disregard of the accused's rights exists in this case. In these circumstances wherein Respondent was accorded all of his rights and the interrogation was reasonable, the statement of Respondent is not barred by either *Miranda* or *Westover*.

The position of the State of Michigan is supported almost unanimously by those courts, both state and federal, which have considered the question.

Reversal of the Michigan Court would in no manner diminish the rights already granted an accused but would, rather, support common-sense as well as efficient investigation of crime.

Neither *Miranda* nor *Westover* preclude interrogation by a separate bureau relative to a separate crime as was the case here.

ARGUMENT

I.

AN ACCUSED WHO HAS ONCE INVOKED HIS RIGHT TO REMAIN SILENT, MAY SUBSEQUENTLY WAIVE HIS MIRANDA RIGHTS PRIOR TO A LATER INTERROGATION WHICH IS CONDUCTED FOR GOOD FAITH REASONS IN A NON-COERCIVE MANNER AND IS NOT INITIATED FOR THE PURPOSE OF UNDERMINING THE RIGHT PREVIOUSLY EXERCISED.

The Michigan Court of Appeals in the instant case held that Respondent could not be interrogated subsequent to his election to remain silent to Detective Cowie's questioning. All interrogation thereafter, the appellate court held, was barred by *Miranda v Arizona*, 384 US 436, 473-474; 86 S Ct 1602, 1627-1628; 16 L Ed 2d 694, 723 (1966), wherein it was stated:

> "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the

> right to cut off questioning; the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked."

Thus, the Michigan Court held that the subsequent interrogation conducted by Homicide Detective Hill was prohibited by the dictates of *Miranda,* and a companion case, *Westover* v *United States,* 384 US at 494; 86 S Ct at 1638; 16 L Ed 2d at 735 (1966). The appellate court therefore ordered the Respondent's confession suppressed as evidence. *People* v *Mosley,* 51 Mich App 105; 214 NW 2d 564 (1974); (Petition for Writ of Certiorari, Appendix "A").

The Petitioner contends that the opinion of the Michigan appellate tribunal is a clearly erroneous interpretation of the *Miranda* rule as well as of the *Westover* holding. The Michigan Court's interpretation, Petitioner asserts, is contrary to the purpose of the *Miranda* rule and the proper application of that rule. Moreover, the lower court's interpretation offends a common-sense approach to effective and efficient law enforcement.

A. The Purpose Underlying the Miranda Rule was Fully Respected in the Instant case.

The purpose of the rule fashioned by this Court in *Miranda* was to establish appropriate safeguards to ensure that in-custody interrogation was carried out in an atmosphere in which an accused can effectively exercise the full panoply of rights granted him by the federal constitution, including the right against compulsory self-incrimination. 384 US 436, 458, 465, 467-469, 473-474, 478-480; 86 S Ct 1602, 1619, 1623, 1624-1625, 1627, 1630-1631.

In the words of this Court:

> "We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." 384 US at 467; 86 S Ct at 1624.

The *Miranda* rule was intended to be prophylactic in effect, to provide "practical reinforcement for the right against compulsory self-incrimination." *Michigan* v *Tucker,* 417 US 433; 94 S Ct 2357; 41 L Ed 2d 182, 193 (1974).

The Petitioner asserts that the purpose underlying the *Miranda* rule was fully effectuated in this case and no breach of Respondent's Fifth Amendment rights is extant when the facts surrounding the interrogation in question are considered.

Respondent was arrested specifically for the robberies of the Blue Goose Bar and the White Tower Restaurant, both perpetrated on Detroit's east side (A. 12). The initial interrogation of Respondent by Detective Cowie focused solely on those robberies (A. 9, 16-17). That initial interrogation session, twenty minutes in length,[10] was immediately terminated after Respondent exercised his right to remain silent pursuant to the *Miranda* warnings which were given him (A. 13-14).

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[10] See footnote 4, *supra.*

The prompt cessation of questioning by Cowie, Petitioner states, clearly illustrated to Respondent, consonant with the mandate of this Court,[11] that his right to refrain from answering questions would be fully respected.[12]

Two and one-half hours later Respondent Mosley was taken from the lockup area to the homicide bureau by Detective Hill and informed that he was there for the purpose of questioning in regard to the Leroy Williams murder. Prior to any questioning Hill apprised Respondent of his rights in such detail that Hill's good faith attempt to comply fully with both the letter and spirit of *Miranda* clearly appears.[13]

The purpose of the interrogation was not to undermine appellant's earlier exercise of his right to remain silent.[14] Rather, Hill was investigating the Leroy Williams case about which he had just received information naming Respondent as the shooter (A. 28-29, 31-32, 34).

Thus Hill's interrogation of Respondent Mosley was not in any manner coercive nor was it a continuation of

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[11] 384 US 436 at 477; 86 S Ct 1602 at 1629.

[12] See, e.g., *State* v *McClelland*, — Iowa — at —; 164 NW 2d 189 at 193 (1969); *State* v *Godfrey*, 182 Neb 451 at 455; 155 NW 2d 438 at 441 (1968), cert den 392 US 937; *United States* v *Collins*, 462 F2d 792, 797 (2d Cir, 1972), cert den 409 US 988, 93 S Ct 343, 34 L Ed 2d 254 (1972).

[13] See footnote 5, *supra;* (A. 25-28, 42-43; R. 560-561).

[14] Indeed, Cowie testified that he did not inform Hill of Respondent's election to remain silent (A. 16); and Hill stated that as far as he knew Respondent had "denied implications" (sic) relative to the robberies. Hill further testified that Cowie told him that he, Cowie, had advised Respondent of his rights and that the *Miranda* warning form was used by him (A. 23).

Cowie's interrogation;[15] and it was not intended to break down the exercise of the previously employed right.[16]

The short period of questioning with the detailed delineation of Respondent's rights, clearly demonstrates that not only did Hill's proceeding combat the "compelling pressures" inherent in in-custody interrogation, 384 US at 467; 86 S Ct at 1624, but, it also created an atmosphere wherein the statements of defendant Mosley could only be the result of voluntariness, both in the traditional sense, *Michigan* v *Tucker, supra*, 417 US 433 at—, 94 S Ct 2357 at 2362, and within the framework established by *Miranda*, 384 US at 478-479; 86 S Ct at 1630.

B. The Miranda Rule was Erroneously Applied in the Instant Case in View of Specific Provisions in Miranda v Arizona.

Petitioner further contends that the facts in the present case fall within two particular provisions of *Miranda* so that the confession of Respondent should have been held admissible by the Michigan Court.

In *Miranda* this Court stated:

> "An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver." 384 US at 475, 86 S Ct at 1628.

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[15] In fact, Cowie asked no questions about the Williams murder since that case belonged to a separate bureau and since Homicide Detective Hill knew the facts contained in that file (A. 9, 16-17).

[16] See, e.g., *People* v *Pittman*, 55 Ill 2d 39; 302 NE 2d 7 (1973); *Conway* v *State*, 7 Md App 400; 256 A2d 178 (1969); *Sergent* v *People*, en banc, 177 Colo 354; 497 P2d 983 (1972); *Jennings* v *United States*, 391 F2d 512 (5th Cir, 1968), cert den 393 US 868; 89 S Ct 21; 21 L Ed 2d 136 (1968).

Here, Detective Hill testified that Respondent did not request an attorney, but, rather, signed the rights form and after an initial denial made his statement (A. 29, 32-33). No long interrogation prior to the confession was conducted (A. 29), nor, in the words of the Respondent, were there any physical or verbal threats used to obtain the confession (R. 580).

In fact, Hill testified that his obtaining the confession was

> ". . . one continuous action; this form was signed at 6:35, and we went right through it" (A. 29).

Thus the Petitioner contends that given the short period of questioning which preceded the giving of the confession, the absence of any showing of coercion, the waiver provision contemplated by this Court referred to above should be held applicable to this case.

Moreover, this Court also stated in *Miranda* that, conceivably an interrogation which continued after a request for counsel could yield a voluntary statement, given a proper case:

> "If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." 384 US at 475; 86 S Ct at 1628.

If the Court could permit a defendant to waive his right to counsel after exercising it, then it could not have intended to preclude a subsequent waiver of any other right co-equal to that granted by the Sixth Amendment. A defendant's Fifth Amendment right must be similarly able to be waived, even if invoked initially. Furthermore since the language in

Miranda cited above referred to the *same* interrogation, a waiver should clearly be proper at a separate inquiry at a later time. *United States* v *Collins,* 462 F 2d 792 (2d Cir, 1972), *(en banc) cert den* 409 US 988; 93 S Ct 343.

Therefore, Petitioner asserts that under *Miranda,* and without resort to any other citation, Respondent should be held able to waive his right to remain silent after initially invoking it, as long as that waiver is knowingly and intelligently made. *Miranda* v *Arizona,* 384 US at 475; 86 S Ct at 1628. Based on Detective Hill's recitation of events leading up to the confession[17] and Respondent's corroboration of them (A. 42-44; R. 580), under the traditional rules regarding "waiver", Respondent knowingly and intelligently waived his *Miranda* rights. *Johnson* v *Zerbst,* 304 US 458; 58 S Ct 1019; 82 L Ed 1461 (1938); *Adams* v *United States,* 317 US 269; 63 S Ct 236; 87 L Ed 268 (1942).

C. The Michigan Court of Appeals Misinterpreted and Misapplied the Rule Derived From Westover v United States, Companion Case to Miranda v Arizona.

Petitioner contends that the holding of the Michigan court[18] which found the procedure utilized in this case offensive to the rule of *Westover* v *United States,* 384 US at 494; 86 S Ct at 1638; 16 L Ed 2d at 735 (1966), is clearly erroneous and failed to properly interpret and apply the lesson of that case.

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[17] See footnote 5, *supra.*

[18] Petition for Writ of Certiorari, Appendix A, p. 13.

In *Westover,* no warnings were given to the defendant by the local police prior to his being questioned for some fourteen hours. The FBI interrogation began immediately after the Kansas City police concluded. No showing was made that an "articulated waiver of rights" was made by the suspect prior to the FBI questioning. Moreover, this Court found that, given the procedure of continuous interrogation, from the accused's standpoint the warnings came at the end of the interrogation process and not at the beginning. This Court then stated, based on the circumstances:

> " . . . an intelligent waiver of constitutional rights cannot be *assumed.*" (Emphasis supplied.) 384 US at 496; 86 S Ct at 1639.

In the instant case, totally unlike the *Westover* example, Respondent was questioned initially for only a brief time after being thoroughly informed of his rights. In fact, the exercise of one of those rights reveals his understanding of them (R. 558-559). Then, after a 2½ hour interim, Respondent was queried in a different bureau area, by a different detective regarding a crime separate and distinct from that of the first inquiry. Respondent's understanding of these changed circumstances clearly appears in the record (A. 25-28, 42-43; R. 560-561). Respondent was informed again of his rights and a signed Notification of Rights Form was executed after a thorough delineation of the rights contained therein (A. 25-29).

In these circumstances, the Petitioner asserts, none of the evils sought to be cured by *Westover* appears. Rather, there was a non-coercive interrogation and a specific recitation of the *Miranda* warnings. Unlike in *Westover,* Respondent's knowing and intelligent waiver of his rights is demonstrated by the record. No "assumption" of waiver is proffered here, as was done in *Westover.*

In addition, Petitioner contends that the precise case now before this Court was specifically allowed for in *Westover:*

> "We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them." 384 US at 496; 86 S Ct at 1639.

Therefore, Petitioner maintains, Respondent's confession was constitutionally procured.

D. The Opinion of the Michigan Court of Appeals is in Conflict With Decisions of Other Courts, Both State and Federal, Which Have Considered the Question Now Before this Court.

Petitioner notes that the other courts which have considered the question now before this Court almost unanimously adhere to the position of the State of Michigan, that an accused may be interrogated after the exercise of the right to remain silent or the right to counsel as long as such inquiry is not for the purpose of subverting the right previously invoked.[19]

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[19] See, e.g., State Courts:

(1) California: *People* v *Duran,* 269 Cal App 2d 112; 74 Cal Rptr 459 (Cal App 1969); *People* v *Lyons,* 18 Cal App 3d 760; 96 Cal Rptr 76 (1971).

(*continued on next page*)

In *Hill* v *Whealon*, 490 F2d 629 (6th Cir, 1974), a case precisely on point with the instant one, the Sixth Circuit Court of Appeals held that a defendant's initial exercise of his right to remain silent did not preclude the accused

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(*continued from preceding page*)

(2) Colorado: *Dyett* v *People*, 177 Colo 370; 494 P2d 94 (en banc) (1972); *Sergent* v *People*, 177 Colo 354; 497 P2d 983 (en banc) (1972).

(3) Illinois: *People* v *White*, 22 Ill 3d 180; 317 NE 2d 323 (1974); *People* v *Pittman*, 55 Ill 2d 39; 302 NE 2d 7 (1973).

(4) Iowa: *State* v *McClelland*, — Iowa —; 164 NW 2d 189 (1969).

(5) Kansas: *State* v *Law*, 214 Kan 643; 522 P2d 320 (1974).

(6) Maryland: Conway v State, 7 Md App 400; 256 A2d 178 (1969).

(7) Minnesota: *State* v *O'Neill*, — Minn —; 216 NW 2d 822 (1974).

(8) Nebraska: *State* v *Moore*, 189 Neb 354; 202 NW 2d 740 (1972); *State* v *Godfrey*, 182 Neb 451; 155 NW 2d 438 (1968), cert den 392 US 937.

(9) New York: *People* v *Gary*, 31 NY 2d 68; 286 NE 2d 263 (1972).

(10) North Carolina: *State* v *Bishop*, 273 NC 283; 158 SE 2d 511 (1968).

(11) Oklahoma: *Penn* v *State*, 456 P2d 606 (Okla Crim, 1969).

(12) Pennsylvania: *Commonwealth* v *Grandison*, 449 Pa 231; 296 A2d 730 (1972).

(13) South Dakota: *State* v *Robinson*, 209 NW 2d 374 (1973).

(14) Texas: *Gunter* v *State*, 477 SW 2d 557 (Ct of Crim App 1972); *Hill* v *State*, 429 SW 2d 481 (Tex Crim App 1968), cert den 393 US 955; 89 S Ct 384; 21 L Ed 2d 367 (1968).

(15) Washington: *State* v *Emmett*, 77 Wash 2d 520; 463 P2d 609 (1970).

(16) Wisconsin: *State* v *Estrada*, 63 Wis 2d 476; 217 NW 2d 359 (1974).

See also *State* v *Higginbothom*, 261 La 983; 261 So 2d 638 (Louisiana 1972), and *Sullins* v *State*, 448 SW 2d 96 (Ct of Crim App Tenn 1969).

(*continued on next page*)

from waiving it subsequently when he was informed by detectives that a statement had been obtained by another person naming him in a homicide. In passing on defendant's allegation that further inquiry should have been precluded by *Miranda*, the Sixth Circuit said:

> "The question to be determined in this case, as in other cases involving *Miranda* warnings, is whether the prosecution has carried its "heavy burden" of establishing that Hill was advised effectively of his rights and whether his confession was made knowingly and voluntarily.
>
> "We agree with the language of Judge Matthes in *Hughes* v *Swenson*, 452 F2d 866, 868 (8th Cir, 1971):
>
> 'It is neither necessary nor desirable to undertake to fashion a per se rule to be applied in all cases presenting the *Miranda* issue. The crucial

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Federal Courts:

(1) Second Circuit: *United States* v *Collins*, 462 F2d 792 (en banc) (1972, 2d Cir), cert den 409 US 988; 93 S Ct 343; 34 L Ed 2d 254 (1972); *United States* v *Brady*, 421 F2d 681 (1970, 2d Cir).

(2) Fifth Circuit: *Jennings* v *United States*, 391 F2d 512 (1968, 5th Cir), cert den 393 US 868; 89 S Ct 154; 21 L Ed 2d 136 (1968); *Narro* v *United States*, 370 F2d 329 (1966, 5th Cir), cert den 387 US 946; 87 S Ct 2081; 18 L Ed 2d 1334 (1966).

(3) Sixth Circuit: *Hill* v *Whealon*, 490 F2d 629 (1974, 6th Cir).

(4) Ninth Circuit: *Coughlin* v *United States*, 391 F2d 371 (1968 9th Cir) cert den 393 US 870; 89 S Ct 159, 21 L Ed 2d 139.

(5) District Courts: (a) *McIntyre* v *State of New York*, 329 F Supp 9 (ED NY 1971).

(b) *United States* v *Hatchel*, 329 F Supp 113 (Mass 1971); 1971);

(c) *United States* v *Barnawell*, 341 F Supp 619 (SD Cal 1972).

question always must be: has the prosecution sustained its heavy burden of demonstrating that the defendant was effectively advised of his rights, and did he knowingly and understandingly decline to exercise them?' " 490 F2d at 630.

The Supreme Court of Minnesota similarly decided a case on point with the present one. In *State* v *O'Neill*, —— Minn——, 216 NW 2d 822 (1974), defendant therein was arrested for a gun ordinance violation. Subsequently, one of his companions implicated him in a homicide. An attempt to interview him was met by a violent outburst which the court found to be an expression of his exercise of the right to remain silent. The interrogation was then terminated. About two hours later the defendant was again approached, given his rights, and told of the implicating statement made by his companion. Defendant then made an admission. The Minnesota court in ruling the procedure proper under *Miranda* stated:

"We hold that it is not improper for the police to approach a defendant after his initial refusal to cooperate and ask him to reconsider his silence. As long as the urging to reconsider is not in any manner compulsive on a defendant and respects his asserted right not to speak, it is not constitutionally prohibited. This method is especially appropriate when, as here, a defendant's initial indication of a desire to remain silent is given before he has been fully apprised of the situation." 216 NW 2d at 829. Accord: *State* v *Godfrey*, 182 Neb 451; 155 NW 2d 438 (1968), *cert den*, 392 US 937."

And in *Jennings* v *United States*, 391 F2d 512, 515-516 (5th Cir, 1968), *cert den* 393 US 868; 89 S Ct 154; 21 L Ed 2d 136 (1968), the federal appellate court in an appeal based on a claim that *Miranda* and *Westover* were violated, summarized its reasons for holding a confession to federal authorities admissible after the accused exercised his right to remain silent before the local authorities in Florida:

"We do not agree with these contentions. It seems clear to us that what the Court sought to interdict in *Miranda* were those situations in which a person has indicated his desire to exercise his constitutional right to silence but the police refuse to take "no" for an answer. Disregarding his constitutional claim, they continue to ask questions, see 384 US at 453, 86 S Ct 1602, 16 L Ed 2d 694. These techniques were not used in this case. It is admitted that the local police ceased interrogation immediately upon appellant's expression of an unwillingness to proceed further.

In *Westover*, the defendant was arrested by local police. With no preliminary warning of his rights, they kept him in custody for over fourteen hours and interrogated him at length during that period. They obtained no statement. The FBI interrogation began immediately and was conducted in the same police headquarters. The Supreme Court said, 'Despite the fact that FBI agents gave warnings at the outset of the interview, from Westover's point of view the warning came at the end of the interrogation process. In these circumstances an intelligent waiver of constitutional rights cannot be assumed'. On the other hand, Jennings was first thoroughly warned by the Fort Pierce police.

> He found out that immediately upon expressing an unwillingness to proceed the interrogation would promptly stop. He had been in custody only about an hour, and the questioning had been brief. When the FBI agent repeated the warnings, appellant for some reason satisfactory to himself, failed to express the same unwillingness theretofore exercised against the local police. The situation lacks a long way of coming within the *Westover* rule."

Accord: *United States* v *Collins,* 462 F2d 792 (2nd Cir, 1972) *(en banc) cert den* 409 US 988; 93 S Ct 343; 34 L Ed 2d 254 (1972); *United States* v *Brady,* 421 F2d 681 (2d Cir, 1970); *State* v *Law*, 214 Kan 643; 522 P2d 320 (1974); *State* v *Emmett,* 77 Wash 2d 520; 463 P2d 609 (1970); *Commonwealth* v *Grandison,* 449 Pa 2d 231; 296 A2d 730 (1972). (See also footnote 19 and cases cited there.)

A review of the above-cited cases and the reasoning therein, Petitioner states, discloses the propriety of the interrogation in the instant case.

E. The Interpretation Given Miranda v Arizona and Westover v United States by the Michigan Court of Appeals Offends a Common Sense Approach to Effective and Efficient Law Enforcement.

Should the Michigan court's interpretation of *Miranda* be permitted to stand, the effective and efficient investigation of criminal behavior will suffer a serious setback with no counterbalancing benefit to the public at large.

Here, both officers involved in this matter scrupulously followed, in both the letter and spirit, what a common-sense reading of *Miranda* requires, *i.e.*, respect for the constitutional rights intended to be guarded thereby. No overbearing conduct by the police appears; no long incommunicado interrogation; no refusal to abide by the wishes of the Respondent.[20] In short, the behavior of the police in this case reveals a conscientious effort to fully and faithfully honor the rights of the accused while attempting to carry out the duties vested in them as officers of the law.

If the practice and procedure utilized in this case are held to violate *Miranda* and *Westover,* then, in any similar case, law enforcement authorities would be precluded from questioning any individual who previously exercised his right to remain silent, irrespective of the crime involved and irrespective of the reasons for the proposed interrogation.

Such a result would offend a logical approach to the investigation of crime and would prevent the solution of crimes such as the instant one.

Here, Detective Hill was the investigator heading a homicide inquiry (R. 459, 529). After talking with Anthony Smith on the date of Respondent's confession and being told Respondent was the shooter in the murder, Hill proceeded to question defendant Mosley. Smith denied any complicity in the crime. Detective Hill stated that he didn't feel that the murder was solved. Thus Hill explains his questioning of Respondent as follows:

> " . . . I told him they were charged with Murder, and I told him that all we had at that time was Anthony Smith's statement, and Anthony Smith said he was the man with the gun.
>
> "And I also told him that as far as we know

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[20] See *State* v *Godfrey,* 182 Neb 451; 155 NW 2d 438, 440 (1968) cert den 392 US 937; *Jennings* v *United States,* 391 F2d 512, 515 (5th Cir 1968), cert den 393 US 868.

for sure, since we were not there, Anthony Smith might have been the man with the gun.

"The Court: You say Anthony Smith might have been the man with the gun?

"[Detective Hill]: Yes, sir. (A. 33)." See also (R. 497).

If Hill were precluded from questioning defendant Mosley, then the police, who had no other witnesses, would have had to decide whether to believe the possibly self-serving statement of a co-felon without any attempt at corroboration or disproof. In such a setting, efficient and reasonable law enforcement requires the opportunity to at least attempt further inquiry. That inquiry could work to the benefit of the accused as well as to his possible detriment. For as was said in dissent to the original *Miranda* rule:

> "The fact is that he may not be guilty at all and may be able to extricate himself quickly and simply if he were told the circumstances of his arrest and were asked to explain." *Miranda* v *Arizona,* (Mr. Justice White dissenting), 384 US at 543; 86 S Ct at 543.

Petitioner further states that reversal of the Michigan court would not diminish the rights already granted an accused. All he or she need do if questioned further would be to reiterate the right previously invoked— a small inconvenience compared to the cost sought to be levied by the Michigan court's decision.

ARGUMENT

II.

THE INVOCATION OF THE RIGHT TO REMAIN SILENT RELATIVE TO ONE CRIME DOES NOT PRECLUDE INTERROGATION VIS-A-VIS A SEPARATE CRIME.

The decision of the Michigan Court of Appeals in effect precludes the investigation and interrogation of a suspect relative to crimes separate and distinct from that to which the accused previously exercised his right against compulsory self-incrimination.[21] Petitioner contends that such a holding does not properly derive from *Miranda* v *Arizona*[22] and *Westover* v *United States,*[23] as was found by the appellate court. Indeed, such a result patently offends the rules of those cases.

Nowhere in the cases relied upon by the Michigan court is a rule to be found which precludes subsequent interrogation that does not have as its purpose the circumvention or abrogation of an accused's rights.

The precept emanating from *Miranda,* Petitioner states, is that a defendant's constitutional rights can be effectively protected by the giving of the warnings therein enumerated —unless other circumstances override and negate the procedural safeguards.[24] And as long as those rights are honorded by the interrogating authority, an accused may be

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[21] *People* v *Mosley,* 51 Mich App 105; 214 NW 2d 564 (1974); Petition for Writ of Certiorari, Appendix A, pp 11-13.

[22] 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[23] 384 US at 494; 86 S Ct 1638; 16 L Ed 2d at 735 (1966).

[24] 384 US at 467; 86 S Ct at 1624.

questioned if a knowing and intelligent waiver of the rights is first obtained.[25]

Miranda's intent was to insure that the accused's right to terminate any questioning was protected and to further preclude the interrogator from failing to take "no" for an answer:

> "Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked."[26]

In *Jennings* v *United States,*[27] the Fifth Circuit held admissible a confession made to federal authorities subsequent to exercise of the right to remain silent before local authorities. In answer to a claim that the later federal interrogation was prohibited by *Miranda* and *Westover,* the court stated:

> "We do not agree with these contentions. It seems clear to us that what the Court sought to interdict in *Miranda* were those situations in which a person has indicated his desire to exercise his constitutional right of silence but the police refuse to take "no" for an answer. Disregarding his constitutional claim, they continue to ask questions, see 384 U.S. at 453, 86 S Ct 1602, 16 L Ed 2d 694. These techniques were not used in this case. It is admitted that the local police ceased interrogation

[25] 384 US at 479; 86 S Ct at 1630.

[26] 384 US at 474; 86 S Ct at 1628.

[27] 391 F2d 512, 515-516 (5th Cir 1968), cert den 393 US 868; 89 S Ct 154.

immediately upon appellant's expression of an unwillingness to proceed further.

"In *Westover,* the defendant was arrested by local police. With no preliminary warning of his rights, they kept him in custody for over fourteen hours and interrogated him at length during that period. They obtained no statement. The F.B.I. interrogation began immediately and was conducted in the same police headquarters. The Supreme Court said, "Despite the fact that F.B.I. agents gave warnings at the outset of the interview, from Westover's point of view the warning came at the end of the interrogation process. In these circumstances an intelligent waiver of constitutional rights cannot be assumed". On the other hand, Jennings was first thoroughly warned by the Fort Pierce police. He found out that immediately upon expressing an unwillingness to proceed the interrogation would promptly stop. He had been in custody only about an hour, and the questioning had been brief. When the F.B.I. agent repeated the warnings, appellant for some reason satisfactory to himself, failed to express the same unwillingness theretofore exercised against the local police. The situation lacks a long way of coming within the *Westover* rule. There was no error in the admission of the statement obtained by the F.B.I."

Accord: e.g., *Hill* v *Whealon,* 490 F2d 629 (6th Cir 1974); *United States* v *Collins,* 462 F2d 792, 802 (2nd Cir 1972) *(en banc) cert den* 409 US 988; 93 S Ct 343 (1972); *Commonwealth* v *Grandison,* 449 Pa 231; 296 A2d 730 (1972); *Sergent* v *People,* 177 Colo 354; 497 P2d 983 (1972); *People* v *Gary,* 31 NY 2d 68; 286 NE 2d 263 (1972); *Conway* v *State,* 7 Md App 400; 256 A2d 178 (1969).

In the instant case Petitioner states that no showing can be made that the questioning of Respondent was for any purpose other than good faith police investigation; and no showing can be made that the rights of Respondent were disregarded or overborne. Therefore based on precise language in *Westover,* Petitioner asserts that the procedure in this case has been allowed for by this court. For as this court said:

> "We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated by them without appropriate warnings. A different case would be presented if an accused were taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them."[28]

Respondent herein was removed both in place and time from his initial interrogation and was twice informed of his rights (A. 7, 25-28). Moreover, the second officer, Hill, clearly informed Respondent that his interrogation regarded a crime separate from the earlier interrogation (A. 22, 31). And Respondent acknowledged his understanding of these circumstances (R. 500, Cf. R. 558-559 and 560-561).

The interrogation in the instant case, unlike in *Westover,* did not involve continuous questioning so that defendant's rights could not be protected by the giving of the requisite warnings.[29]

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[28] *Westover* v *United States,* 384 US at 496; 86 S Ct at 1639.

[29] *Westover* v *United States,* 384 US at 496; 86 S Ct at 1639.

Rather the circumstances surrounding the interrogation clearly evidence an atmosphere wherein Respondent's statements could only be the product of free choice.

To accept the position of the Michigan Court of Appeals here would require, as the Supreme Court of Iowa has noted:

> " . . .an ironclad rule prohibiting police officers from subsequently inquiring of a defendant who has invoked his right to silence whether he wishes at any time to waive that right. Certainly a defendant has a right to reconsider and change his decision in the matter. We do not believe *Miranda* goes so far as to exclude all answers to questions put to defendants after they have claimed their right to remain silent. This is particularly true under a record, as here, which is clearly demonstrative of the wholly voluntary nature of the given response. To hold otherwise would overlook the realities of efficient and practical criminal investigation."[30]

An ironclad rule prohibiting the interrogation by Hill would only serve to undermine reasonable efforts aimed at investigating crime.

Barring Hill's questioning of Respondent would mean that law enforcement authorities could not question a suspect even though that suspect had never indicated an unwillingness to talk about the crime at issue. Such a result, Petitioner claims, is not within the purview of either *Miranda* or *Westover.*

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[30] *State* v *McClelland,* — Iowa —; 164 NW 2d 189, 193 (1969).

CONCLUSION

Wherefore, the Petitioner concludes that this Court should reverse the decision of the Michigan Court of Appeals; hold that the Respondent knowingly and intelligently waived his *Miranda* rights; and affirm Respondent's conviction for First Degree Murder.

Respectfully submitted,

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